BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper)	DOCKET TV-090187
Carrier Classification of:)	
)	ORDER 02
ALL MY SONS SEATTLE'S BEST PACK)	
AND LOAD, INC., SEATTLE'S BEST)	INITIAL ORDER FINDING IN
PACK AND LOAD, INC., and)	DEFAULT AND REQUIRING ALL
WASHINGTON TRUCK RENTALS, INC.)	MY SONS SEATTLE'S BEST
)	PACK AND LOAD, INC.,
)	SEATTLE'S BEST PACK AND
)	LOAD, INC., AND WASHINGTON
)	TRUCK RENTALS, INC. TO
)	CEASE AND DESIST
)	INTRASTATE HOUSEHOLD
)	GOODS MOVING OPERATIONS
)	

INTRODUCTION

- Synopsis. This is an Administrative Law Judge's Initial Order that is not effective unless approved or allowed to become effective pursuant to the notice at the end of this Order. If this Initial Order becomes final, All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., will be found in default and required to cease and desist all intrastate household goods moving operations effective immediately.
- Nature of Proceeding. The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding on its own motion to determine whether All My Sons Seattle's Best Pack and Load, Inc. (AMS), Seattle's Best Pack and Load, Inc. (SBPL), and Washington Truck Rentals, Inc. (WTR), are operating, in concert, as a common carrier for transportation of household goods for compensation within the state of Washington without possessing the certificate required for such operations.

3 **Background and Procedural History.** On June 1, 2009, the Commission entered Order 01, Order Instituting Special Proceeding and Notice of Hearing, pursuant to RCW 81.04.510, initiating this docket on its own motion to determine whether AMS, SBPL, and WTR are operating in concert as a household goods carrier, transporting household goods by motor vehicles for compensation between points in the state of Washington and on the public highways of the state of Washington without the necessary certificate required for such operations by RCW 81.80.070. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to AMS, SBPL, WTR, and Mr. Kermit Escribano commanding them to appear before the Commission at a special proceeding scheduled to convene at 1:30 p.m., June 24, 2009, in the Commission's offices at 1300 Evergreen Park Drive S.W., Olympia, Washington, and bring the documents cited in the *Subpoena Duces Tecum*.

- 4 **Appearances.** Jennifer Cameron-Rulkowski, Assistant Attorney General, represents the Commission's regulatory staff (Commission Staff or Staff). Kermit Escribano did not appear either personally or telephonically via the Commission's bridge line in response to the Subpoenas. No other individual appeared either personally or telephonically via the Commission's bridge line on behalf of AMS, SBPL, or WTR in response to the Subpoenas.
- On June 24, 2009, the hearing convened, as scheduled, in Olympia, Washington, before Administrative Law Judge Patricia Clark. Staff presented the testimony of Carlene Hughes, Compliance Program Coordinator in the Commission's Compliance Investigation Section.
- Motion for Default. At the onset of the hearing, Staff moved to find Mr. Kermit Escribano, AMS, SBPL, and WTR in default pursuant to RCW 34.05.440 and WAC 480-07-450 for failure to appear at the hearing or participate in this proceeding. Staff

¹ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

requested that the Commission proceed with the hearing and dispose of the issues on the merits of the record.

- In support of its oral motion for default, Staff stated that on June 1, 2009, the Commission sent by first-class mail and by certified mail, a copy of the Order Instituting Special Proceeding; Notice of Hearing, and Subpoenas to the known addresses of AMS, SBPL, WTR, and Mr. Kermit Escribano in Kent, Washington, and to Mr. Kermit Escribano to two known addresses in Plano, Texas.² In addition, Staff produced Declarations of Service from ABC Legal Services demonstrating that on June 4, 2009, Corporations Service Company, the Registered Agent for WTR and SBPL, was personally served with copies of the Subpoenas and Order in Classification Proceeding.³
- Staff also stated that on June 22, 2009, it received a letter from Ms. Mallory Duggan, Administrative Assistant, All My Sons Business Development, forwarding a letter from Mr. Kermit Escribano. Staff asserted that the letter from Mr. Escribano contains no stated intent to participate in the proceeding and that while Mr. Escribano states that he is unavailable, he does not request a continuance of the proceeding. Staff stated that neither the letter from Ms. Duggan nor Mr. Escribano contain either an email address or telephone number to allow expeditious communication from the Staff. Staff notes that the letter was sent via United States Mail service rather than a more expeditious form of communication. In addition, Staff asserts that an individual other than Mr. Escribano could have appeared on behalf of AMS, SBPL, and WTR in response to the Subpoenas issued in this proceeding. Staff requested the Commission proceed with the hearing and dispose of this matter on the merits.
- The Commission granted the motion for default at the onset of the hearing. AMS, SBPL, WTR and Mr. Kermit Escribano were served via United States Postal Service first class mail and certified mail with the Order and Subpoenas in this proceeding.⁵ In addition the registered agent for WTR and SPBL, Corporations Service Company,

² Hughes, Exh. No. 1 at 1-2. During the hearing, Exhibit No. 17 was incorrectly identified and should be deleted from the record in this proceeding.

³ Hughes, Exh. Nos. 2 and 3.

⁴ Hughes, Exh. No. 5, at 1-2.

⁵ Hughes, Exh. No. 1 at 1-2.

was personally served with the Order and Subpoenas. Mr. Escribano acknowledges receipt of these documents by his letter stating his intent to not appear at the hearing. No other representative for AMS, SBPL, and WTR was physically present for the hearing. In addition, while the Commission's bridge line was on and operating properly, no individual appeared telephonically for the hearing. The letter from Mr. Escribano also states a clear intent to not comply with the Subpoenas issued by the Commission.

Mr. Escribano, on his own behalf, and apparently on behalf of AMS, SBPL, and WTR displays a flagrant disregard for the Commission's plenary authority over household goods carriers within the state of Washington and the Commission's *subpoena* powers. Mr. Escribano states that it "would be a great inconvenience for me to attend a hearing in Olympia in June" but does not provide any reason why he could not appear telephonically at the proceeding or request a continuance of the hearing date. Mr. Escribano does not provide any reason why another representative of the corporations named in the proceeding could not appear at the hearing. Mr. Escribano goes so far as to conclude that "[he] does not believe that a hearing would be useful or accomplish [your] purposes at this time." The Commission, not Mr. Escribano, determines whether the public interest requires a hearing.

Mr. Escribano, AMS, SBPL, and WTR were issued *subpoenas*, not invitations, to participate in the Commission's proceeding. Pursuant to the *subpoena* powers granted in RCW 34.05.446, RCW 80.01.060(1), and RCW 81.04.510, Mr. Escribano AMS, SBPL and WTR were *commanded* to attend the hearing and bring all required documents cited in the *subpoena duces tecum*. Simply put, attendance at the hearing was mandatory, not discretionary. Accordingly, pursuant to RCW 34.05.440 and WAC 480-07-450, Mr. Escribano, AMS, SBPL, and WTR are in default. We proceed to consider the merits of the issues raised in this proceeding.

⁶ Hughes, Exh. Nos. 2 and 3.

⁷ Hughes, Exh. No. 5 at 2.

⁸ *Id.*.

DISCUSSION AND DECISION

Discussion. The Commission Staff initiated an investigation into the operations of AMS, SBPL, and WTR after being contacted by a Seattle television station, King 5 TV, that a move had taken place involving All My Sons Moving & Storage of Seattle, Inc. (All My Sons Moving & Storage) trucks with paperwork demonstrating moving services by three different companies. The customer in that move, Lisa Lancaster, was planning a move within the city of Seattle, so she conducted a "Google" search for "moving companies Seattle." All My Sons Moving & Storage was one of the first three names revealed by the "Google" search. Ms. Lancaster called the toll-free number listed on the internet site and booked a household goods move with All My Sons Moving & Storage. Storage.

On the date of the scheduled move, January 29, 2009, an All My Sons Moving & Storage truck arrived at Ms. Lancaster's residence in Seattle with two movers. One of the movers completed an "Estimated Costs for Services" form bearing the business name of "All My Sons Moving & Storage" estimating the move to take 6.5 hours for one van and the services of two men at \$89 per hour or a total estimate of \$578.50. The two movers then wrapped Ms. Lancaster's couch and glass furniture, loaded the furniture and the customer's pre-packed boxes into the truck, transported them one-half mile to the destination, and unloaded the furniture and customer's boxes.

At the conclusion of the move, one mover completed a "Pack and Load Services Agreement" bearing the name of AMS and the address of All My Sons Moving & Storage. The total amount billed was \$346.70. The mover also completed a second form entitled "Truck Rental Agreement" bearing the name WTR and the address of All My Sons Moving & Storage. The amount billed on the second agreement was

¹⁰ Hughes, Exh. No. 9 at 1.

⁹ TR at 15.

¹¹ *Id*.

¹² Hughes, Exh. No. 4 at 7.

¹³ *Id.* and Hughes, Exh. No. 8 at 2.

¹⁴ *Id*.

¹⁵ Hughes, Exh. No. 4 at 7.

¹⁶ *Id.* and Hughes, Exh. No. 8 at 3.

¹⁷ Hughes, Exh. No. 4 at 7 and Hughes, Exh. No. 8 at 4.

\$412.50. 18 The mover completed two credit card receipts; one for \$346.70 and one for \$412.50, or a total of \$759.20. 19 Ms. Lancaster paid both billings with a credit card. Ms. Lancaster understood that she had hired and paid All My Sons Moving & Storage to perform her household goods move.²¹

An additional intrastate move was brought to Staff's attention during the 15 investigation. On March 9, 2009, Staff received an e-mail from Adonis Newkirk of the Bremerton Housing Authority that a resident in one of their housing projects, Mr. Jeff Seiller, had hired All My Sons Moving & Storage to move his household goods from Bremerton to his new home in Seattle.²² In planning his move, Mr. Seiller searched moving companies on the internet at "dexonline.com." 23 Mr. Seiller found All My Sons Moving & Storage in his online search and contacted them on March 5, 2009, to arrange a household goods move on March 6, 2009. Mr. Seiller packed his own household goods and movers loaded his household goods into a truck, transported them from Bremerton to Seattle, and unloaded the household goods in his new residence.²⁴ At the conclusion of the move, the movers requested more money than was agreed to and the movers threatened to hold Mr. Seiller's belongings and place them into storage until he paid the additional cost of the move.²⁵ Mr. Seiller contacted the Bremerton Housing Authority for additional monies.²⁶ At that time, Ms. Newkirk learned that All My Sons Moving & Storage was not a licensed mover and she contacted the Commission.²⁷

Mr. Seiller received an "Estimated Cost of Services" bearing the name and address 16 for All My Sons Moving & Storage. 28 After the move was completed, Mr. Seiller was presented with two documents; (1) a "Pack and Load Agreement" bearing the name of AMS, the address of All My Sons Moving & Storage, and an amount due of

¹⁹ *Id.* at 9.

¹⁸ *Id*.

²⁰ Hughes, Exh. No. 8 at 5.

²¹ Hughes, Exh. No. 4 at 6.

²² TR 22.

²³ Hughes, Exh. No. 11 at 3. The internet site, "dexonline.com" is an online telephone directory.

²⁴ Hughes, Exh. No. 11 at 3-5.

²⁵ TR 22-23.

²⁶ *Id.* at 23.

²⁷ *Id*.

²⁸ Hughes, Exh. No. 10 at 4-5.

\$243.75²⁹ and (2) a "Truck Rental Agreement" bearing the name of WTR, the address of All My Sons Moving & Storage, and an amount due of \$312.50.³⁰ The total cost of the move was \$556.25. Mr. Seiller received an invoice for the move from "All My Sons Seattle" showing the total moving charges of \$556.25, a cash payment of \$371, and a balance due and owing of \$185.25. 31 Mr. Seiller hired All My Sons Moving & Storage to perform his household goods move and the Bremerton Housing Authority paid All My Sons for those services.³²

Staff stated that the most common way of providing household goods moving 17 services is to hire one company to provide the labor, equipment, specialized services such as packing goods, loading and unloading goods, and a vehicle and transportation for the move.³³ Staff concluded that it was very unusual to have household goods moves, such as those of Ms. Lancaster and Mr. Seiller, performed by more than one company.34

Staff's investigation revealed that All My Son Moving & Storage is registered with 18 the Secretary of State's Corporation Division and the Department of Licensing.³⁵ On the date of Ms. Lancaster's move, January 29, 2009, neither AMS nor SBPL were registered with the Secretary of State's Corporation Division or the Department of Licensing.³⁶ On March 13, 2009, Staff conducted a second search of the online records of the Secretary of State and the Department of Licensing and found that, on February 27, 2009, a for-profit corporation had been incorporated under the name of SBPL.³⁷ Between March 13 and 26, 2009, SBPL added the registered trade name of "Washington Pack and Load" to its business license.

²⁹ *Id.* at 2.

³⁰ *Id.* at 3.

³¹ *Id.* at 1.

³² Hughes, Exh. No. 4 at 9-10.

³³ TR at 28-29.

³⁴ TR at 29.

³⁵ Hughes, Exh. No. 4 at 18.

³⁷ *Id.* at 19. The president of the corporation is listed as Kermit Escribano and the business address is identical to the one listed for All My Sons Moving & Storage.

On January 29, 2009, the date of Ms. Lancaster's move, WTR was not registered or 19 licensed by either the Secretary of State or the Department of Licensing.³⁸ On March 13, 2009, Staff conducted a second online search and found that on February 5, 2009, Kermit Escribano incorporated a for-profit corporation with the Secretary of State under the name of WTR and that WTR holds a business license.³⁹

- 20 Staff last searched the online records of the Department of Licensing and the Secretary of State for All My Sons Moving & Storage, SBPL, and WTR on the date of the hearing, June 24, 2009, and there was no change in the information listed on those internet sites.
- 21 AMS, SBPL, and WTR do not hold Commission authority to transport household goods over public roads in Washington. 40 All My Sons Moving & Storage formerly held authority to transport household goods in Washington; that authority was cancelled effective November 13, 2008. 41 AMS, SBPL, WTR, and All My Sons Moving & Storage have the same business address. Mr. Kermit Escribano is an officer of All My Sons Moving & Storage, SBPL and WTR.⁴²
- 22 **Applicable Law.** Common carriers of household goods are defined in RCW 81.80.010 as persons engaged in the business of transporting household goods. According to RCW 81.80.070, common carriers for transportation of household goods by motor vehicle for compensation between points within the state of Washington must obtain the certificate, from the Commission, required for such operations. The Commission is authorized, upon proof that unauthorized operations occurred, to issue an order requiring the subject companies to cease and desist the activities subject to regulation. RCW 81.04.510.

³⁸ *Id*.

³⁹ *Id.* The president of the corporation is listed as Kermit Escribano and the business address is the same as that listed for All My Sons Moving & Storage.

⁴¹ Washington Utilities & Transportation Commission v. All My Sons Moving & Storage of Seattle, Inc., Docket TV-071125, Order 05 entered November 13, 2008. ⁴² TR at 26.

Discussion. The underlying purpose of the Commission's authority to regulate household goods carriers is to protect members of the public who enter into business transactions with such carriers. In light of this purpose, the facts of this case are very troubling.

The evidence adduced in this proceeding demonstrates that All My Sons Moving & 24 Storage holds itself out to the public as a household goods carrier within the state of Washington. Despite having its authority to provide intrastate household goods moves cancelled by the Commission, All My Sons Moving & Storage advertises its services on various online sites including, but not limited to, dexonline.com. 43 The two customers at issue in this case relied on that online advertising to hire All My Sons Moving & Storage to conduct their household goods moves within the state of Washington. At all relevant times, the customers believed that they were dealing with All My Sons Moving & Storage; a belief that was well-founded. It is undisputed that All My Sons Moving & Storage scheduled their moves, All My Sons Moving & Storage trucks arrived at the locations that were the origination points of the moves, and customers were presented with "Estimated Costs For Services" forms bearing the name of All My Sons Moving & Storage. 44 It is also undisputed that representatives of the moving company wrapped furniture, loaded furniture and pre-packed boxes onto All My Sons Moving & Storage trucks, and transported to and unloaded at the destinations, the household goods placed in their care.

At the conclusion of the moves, the undisputed facts take a more unsettling turn. Instead of completing a single invoice for the work performed, representatives of the moving company presented customers with paperwork for two separate companies; a "pack and load agreement, including an invoice, for AMS and a "truck rental agreement," including an invoice, for WTR. It is highly unusual to perform household goods moves in this manner; typically one company is retained to perform all services associated with moving a customer's personal property from one location to another.

 $^{^{43}}$ Hughes, Exh. Nos. 12 - 14.

⁴⁴ Although All My Sons Moving & Storage was not named as a respondent in this proceeding, the evidence demonstrates that two consumers believed their household goods moves were performed by this carrier.

The manner in which these moves were performed leads the Commission to the conclusion that All My Sons Moving & Storage and/or AMS, SBPL, and WTR, acting in concert, performed the household goods moves. The customers in this case retained the services of All My Sons Moving & Storage to perform their household goods moves. The moves were performed with trucks bearing the logo of "All My Sons Moving & Storage." After performing the move, company representatives separated the moving process into "pack and load" and "transportation" elements. The "pack and load" portion of the move was purportedly performed by AMS and the "transportation" element was purportedly performed by WTR. The separate billings presented to customers bear the names of AMS and WTR, but the same business address as All My Sons Moving & Storage. The Secretary of State and Department of Licensing searches of these corporations reveal that the same individual, Kermit Escribano, serves as an officer in each and every corporation.

The Commission is not persuaded by the paperwork and corporate fiction presented by All My Sons Moving & Storage, AMS, SBPL, and WTR. Parsing the components of a household goods move in this manner does not change the character of the service offered and provided to the public. Moving a customer's personal property from one location to another ordinarily requires *all* of the functions purportedly performed by the actions of three separate corporations in this case, albeit by the same personnel using the same equipment. It is apparent that All My Sons Moving & Storage, AMS, SBPL, and/or WTR acted in concert to conduct all the elements of two intrastate household goods moves. None of these corporations holds a certificate from the Commission authorizing the provision of household goods moving services within the state of Washington. Accordingly, AMS, SBPL, and WTR are required to cease and desist all intrastate household goods moving operations effective immediately. In the state of Washington and the state of washington are required to cease and desist all intrastate household goods moving operations effective immediately.

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⁴⁵ The analysis may be different if a customer specifically requested exclusively pack and load services and only those services were provided. In this case, however, both customers packed their own household goods and arranged for their personal property to be loaded and transported to their new residence.

⁴⁶ All My Sons Moving & Storage was required to cease and desist operations by Order 05 entered in Docket TV-071125 on November 13, 2008. For a full citation, *see* n. 17.

FINDINGS OF FACT

- 28 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with authority to regulate persons engaged in the business of transporting household goods for compensation over public roads in Washington.
- 29 (2) Mr. Kermit Escribano, All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., failed to appear or participate in the hearing in this matter on June 24, 2009.
- All My Sons Moving & Storage of Seattle, Inc., All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., hold themselves out to the public as corporations engaged in the business of transporting household goods for compensation over public roads in Washington by advertising services on internet sites including, but not limited to, an online telephone directory.
- All My Sons Moving & Storage of Seattle, Inc., All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals transported the household goods of Ms. Lisa Lancaster and Mr. Jeff Seiller, on January 29, 2009, and March 6, 2009, respectively, for compensation over the public roads of Washington.
- 32 (5) All My Sons Moving & Storage Seattle, Inc., does not hold authority to transport household goods over public roads within Washington.
- All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., have not applied for, nor obtained from the Commission, certificates to operate as household goods carriers in Washington.

CONCLUSIONS OF LAW

- The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and over All My Sons Moving & Storage Seattle, Inc., All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., pursuant to RCW 81.04.510, RCW 81.80.010, and RCW 81.80.070.
- Mr. Kermit Escribano, All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., are in default pursuant to RCW 34.05.440 and WAC 480-07-450 for failure to appear or participate in the hearing in this matter.
- All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., performed household goods moving services without first having obtained a certificate from the Washington Utilities & Transportation Commission, in violation of RCW 81.80.070.
- All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., should be directed to cease and desist from household goods transportation over public roads in Washington pursuant to RCW 81.04.510.

ORDER

THE COMMISSION ORDERS:

All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., are classified as common carriers of household goods with the state of Washington.

All My Sons Seattle's Best Pack and Load, Inc., Seattle's Best Pack and Load, Inc., and Washington Truck Rentals, Inc., shall cease and desist from operations in this state requiring a certificate under RCW 81.80.070 unless or until they obtain the required authority from the Washington Utilities & Transportation Commission.

DATED at Olympia, Washington, and effective August 18, 2009.

PATRICIA CLARK Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final either by operation of law or on administrative review.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and **three (3)** copies of your Petition or Answer by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary Washington Utilities and Transportation Commission P.O. Box 47250
Olympia, Washington 98504-7250